

REC-83-169

#6365
Councilman
Yates

Wilmington, Delaware
June 9, 1983

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Agreement, a copy of which is attached hereto and made a part hereof, between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware, and NEW CASTLE COUNTY, a political subdivision of the State of Delaware, pertaining to the management by the City of a sewage treatment system and the payment by the County for services received therefrom, is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute as many copies of said Agreement as may be necessary.

Passed by City Council,
June 9, 1983

ATTEST: _____
City Clerk

Approved as to form,
June 6, 1983

Robert J. O'Neil
City Solicitor

Bill Turner

Rec. 83-167

CITY/COUNTY AGREEMENT
CONCERNING
WILMINGTON SEWAGE TREATMENT SYSTEM

THIS AGREEMENT, made this 17TH day of June ~~April~~
A.D., 1983, by and between THE CITY OF WILMINGTON, a municipal
corporation of the State of Delaware, party of the first part,
(hereinafter "City") and NEW CASTLE COUNTY, a political
subdivision of the State of Delaware, party of the second part
(hereinafter "County").

WHEREAS, the City of Wilmington has owned, operated,
and maintained a major sewage treatment system, including a
sewage treatment plant, and for some time has received and
treated sanitary and industrial wastes from the adjacent areas
of New Castle County; and

WHEREAS, the City and the County have from time to
time entered into agreements pertaining to the management and
expansion of this system by the City and the payment by the
County for services received therefrom; and

WHEREAS, the last dated written agreement between the
City and County pertaining to this system was made in December
of 1977; and

WHEREAS, the City of Wilmington and New Castle County
continue to recognize the need for close cooperation in
treatment of regional sewage to avoid duplication of costly
facilities and to thus reduce the overall cost of service and
therefore the parties desire that the City continue to treat
the County's sewage subject to current plant capacity described
herein, provided that the cost of treatment to the County
reflects its fair share of the County's actual relevant
treatment costs as herein defined; and

WHEREAS, in recognition of the aforesaid, the City and
County are of the belief that a new agreement is required.

NOW THEREFORE, the City and County, in consideration of the mutual promises and covenants set forth herein, agree that the usage by the County of the Wilmington sewage treatment system shall be governed by and in accordance with the terms and conditions herein set forth.

ARTICLE I

STANDARDS AND REGULATIONS

1. The City owns, operates, maintains, and administers a sewage treatment system, consisting of a sewage treatment plant (hereinafter "Plant") and a collection and transmission network (hereinafter "Network").
2. The City agrees to receive in the Network the sanitary sewage and industrial wastes discharged from the County intercepting sewers at several locations near the City limits, and to thereafter treat this sewage and these wastes at its Plant.
3. Since the Plant, as it currently exists, has been designed to treat an annual average flow of ninety million gallons per day (90 mgd), the parties agree to a hydraulic allocation on the basis of 35 mgd for the City and 55 mgd for the County. In the event the County requires additional hydraulic capacity at the Plant in excess of this allocation, the use of such additional capacity shall be subject to a surcharge over and above the annual rates derived and set forth in Article II, infra. The City will annually notify the County of the unutilized County capacity as of March 20.
4. The County agrees to limit the daily maximum flow resulting from storm conditions to a total of one hundred million gallons per day (100 mgd).
5. The County agrees to cooperate and assist the City in investigating accidental spills or discharges of toxic pollutants generated by industries located in the County.

6. The County agrees to review with the City any new or proposed discharges from any industry in the County whose discharge may be in excess of the current Waste Treatment Limitation Regulations of the City.

7. The County shall accept any and all responsibility for any and all damage to the Plant and/or its processes arising from or contributed to by any daily maximum flow in excess of 100 mgd arising from the County outside the City limits (hereinafter, variously, "in the County" or "from the County") from spills or discharges of toxic pollutants generated by industries in the County or from discharges from any industry in the County in excess of the then-current Waste Treatment Limitation Regulations of the City.

8. The County agrees to formulate and enforce necessary rules and regulations and to do whatever else, including chlorination, as may be necessary so that the quality of the sanitary sewage and industrial waste discharge into the City's intercepting sewers will meet any and all standards which the City may determine for sewage and industrial wastes.

9. Both parties agree to continue to maintain all sewers under their respective jurisdictions as is done at present.

10. The City agrees to review with the County permissible standards for discharge of toxic pollutants and the County agrees to cooperate with the City towards implementation and enforcement of rules and regulations governing the discharge of industrial waste or toxic pollutants into the City's system.

11. The City and County shall periodically exchange technological data, including strength and flow data, with respect to the City and County systems.

ARTICLE II

BASIS OF CHARGE

1. The City incurs certain costs in the operation of its system set forth and itemized in three major components of cost, hereinafter referred to as "classes of cost."

2. Class I. Normal operating costs for treating waste water. These costs include:

- (a) Materials, supplies, and equipment.
- (b) Personnel
- (c) Fringe benefits, including pension benefits funded by the City at actuarially-established rates. The City assures that the salaries and fringe benefits of its employees at its Sewage Treatment Plant shall be and remain comparable to those of other similarly situated employees of the City.
- (d) Workmen's Compensation to the extent such cost is not included in fringe benefits, indirect cost, or any other cost set forth herein.
- (e) Insurance at a cost determined by the City's current insurance broker.
- (f) Indirect costs at the rate specified and approved in the City's Indirect Cost Plan (FMC74-4).
- (g) Depreciation on the list of assets attached hereto and made a part hereof as Exhibit A. Exhibit A will be updated from time to time as additional assets are added to the system.
- (h) Interest on debt service.
- (i) Twenty percent (20%) of the City's water-sewer meter reading costs, unless the number of meters to be read in the County changes by more than ten percent (10%).
- (j) Accounts payable at year end in all categories above.

These costs shall not include:

- (a) Interfund charges.
- (b) Principal on debt service.
- (c) Encumbrances.

3. Class II. Transmission and Collection Costs.

All normal transmission and collection costs in conformity with the subcategorization set forth with respect to Class I, above.

4. Class III. Additional Capital Costs. Any and

all capital costs incurred for County usage subsequent to the date of this Agreement.

5. The City will establish its annual sewer user

charges based upon budget projections of the three aforesaid classes of cost as itemized herein. The user charges shall appear in the Wilmington City Code (currently Chapter 41) as shall be amended from time to time.

The City shall notify the County in writing not later than March 1 of each year for the term of this Agreement of the rates expected to be proposed for the next immediate fiscal year and cost data supporting these proposed rates. Upon completion of the Mayor's budget review, but in no event later than March 20, the City shall provide to the County the final rates to be presented to City Council as part of the Mayor's budget presentation and cost data supporting these proposed rates. The City will endeavor to keep the County informed of changes made by the City Council and will provide to the County the actual rates adopted by the Council and the estimated annual amount to be billed the County as soon as available but in no event later than June 1.

6. For the County use of the City system, the City

shall charge the County and the County agrees to pay the City upon the basis of the adopted user charges. It is agreed that the cost to the County for its use of the system shall be based upon and in recognition of a certain percentage of Class I costs, to be determined by actual strengths and flow of sewage and wastes; ten percent (10%) of Class II depreciation and interest costs; and five percent (5%) of all other Class II costs subject to there being no change in the sewer lines used

(d) Any adjustment required following the last and final payment due following the termination of this Agreement shall be made within one hundred twenty (120) days of the date of termination of this Agreement.

4. In the event the County fails to pay on the due date the sums due and owing to the City for any month during the term of this Agreement, the County shall pay to the City interest on such unpaid sums at the prevailing prime rate of the City's depository and such additional collection costs incurred by the City as determined by the City's Director of Finance, provided that in the event the County has not adopted a budget by July 1, the first payment for such fiscal year shall not be due until the day after such budget is adopted. Such additional collection costs shall be reviewed by the County and be subject at County's option to arbitration as per Article IV, Section 8.

5. In the event County usage of the City system diminishes below its usage for FY 1983 for any reason whatsoever, including such diminution as may result from the establishment by the County of its own sewage treatment plant and/or processes the County will nonetheless continue to pay to the City proportionate costs of all present outstanding sewage system obligations (as described in Exhibit B, updated upon passage of any bond authorization ordinance) of the City for the full term thereof, and shall continue as well to pay its proportionate costs of all capital improvement obligations undertaken by the City after the effective date of this Agreement for the full term thereof, notwithstanding termination of this Agreement by expiration or otherwise. The proportionate costs of the County for the purpose of this calculation shall be the same proportion as it was paying in the fiscal year immediately prior to such diminution or cessation. For purposes of this Agreement, the terms "undertaken" as used herein shall mean the passage by the City

by the County, provided that should the County change such use and resume use of other sewer lines then and in that event the County shall pay ten percent (10%) of all Class II costs; and one hundred percent (100%) of Class III costs.

ARTICLE III

BILLING AND PAYMENT

1. As of the fiscal year beginning on July 1, 1983, and continuing during the time of this Agreement, payment of sewer user charges by the County to the City shall be paid monthly in advance, payable on the first of each month.

2. The monthly payment by the County shall be one-twelfth (1/12) of the annual amount due in Class I, II, and III as calculated by the City on the basis of anticipated flows and strengths applied as a multiplier to the applicable user charges as established by ordinance of the City Council and set forth in Chapter 41 of the Wilmington City Code, as amended from time to time.

3. (a) Upon completion of the fiscal year actual strengths, flows and costs will be known. The City will recompute the rates based on the actual costs, strengths, and flows in the same manner as provided in Article II. The County's bill for the past fiscal year shall be recalculated by applying the actual County strengths and flows to the rates computed above.

(b) If the recalculated County bill is greater than the amount actually paid, the County will pay the additional amount within one hundred twenty (120) days of receipt of the above calculations.

(c) If the recalculated County bill is less than the amount actually paid, the City will give the County a credit on the next fiscal year's estimated bill.

it is understood and agreed by the parties that the user charges, otherwise derived from costs, may be increased to generate a return on investment. The return on investment allowed under this provision is hereby defined as the highest rate of return on assets allowed by the Public Service Commission for water, gas, and electric utilities operating in New Castle County. Should there arise a dispute between the City and County as to whether an event or act is an "outside event" beyond the control of the City, then and in that event, such dispute shall be submitted to arbitration in accordance with the provisions of Article IV, Paragraph 8 of this Agreement.

In the event that the City shall increase user charges to generate a return on investment under the provisions of this section, the County shall have the option of terminating this Agreement subject to the provisions of Article III, Paragraph 5, upon six (6) months notice in writing.

4. Unforeseen Requirements. In the event mandatory requirements imposed upon the City by statute or by regulation enforceable by the Environmental Protection Agency or any other Federal or State agency render impossible the performance by the City of this Agreement, the County agrees to accept, abide by, and undertake its proportional share of any additional expenses, flow limitations, and the like thus mandated.

5. Absolute Impossibility. In the event there shall be significant destruction or disablement by the City's system or any part thereof, this Agreement may be cancelled by the City, without penalty, upon seven days' written notice to the County.

6. Assignment or Transfer of Agreement. The parties hereto shall not assign, subcontract, or otherwise transfer the Agreement or any portion thereof except with written consent of both parties.

Council of a bond authorization ordinance for a Capital Improvement Project contemplated by the City. Provided, however, that in the event that a diminution as contemplated in this Agreement may result, the City shall make a good faith effort to minimize any expenses or obligations or reasonably foreseeable losses which it may incur. Further provided that in the event such diminution as is contemplated in this Agreement may result from the establishment by the County of its own sewage treatment plant and/or processes, the County will give to the City written notice of such contemplated project not less than one year before the County incurs any financial obligation toward completion of its own sewage treatment plant and/or processes. The terms of this section shall survive this Agreement and remain in force while any sewage system obligations described in Exhibit B remain outstanding.

ARTICLE IV

GENERAL PROVISIONS

1. Effective Date. This Agreement shall become effective upon execution by the parties hereto and shall remain in effect until 12:00 midnight, June 30, 1986, unless sooner suspended or terminated in accordance with the terms of this Agreement.
2. Extension. The City and County mutually agree to notify each other in writing by March 1, 1986, and by March 1 of every fourth year thereafter, if they desire to renegotiate the terms hereof. If neither party gives notice of its intention to renegotiate as specified above, this Agreement will be automatically extended for an additional four-year term.
3. Return on Investment. In the event that the City's financial structure becomes seriously impaired, as determined by the Mayor and Council of the City, solely as a result of outside events such as Court decisions, acts of the General Assembly, Federally-mandated requirements, or other events beyond the control of the City, then and in that event,

7. Modification. This Agreement contains the full and complete understanding between the City and County, and supercedes any and all previous agreements and/or proposals, whether oral or written. With the exception of modification in the manner set forth elsewhere in this Agreement, the Agreement may not be modified except by a written and duly executed amendatory agreement of the parties hereto.

8. Arbitration. All claims, disputes, and other matters in question between the parties, arising out of, or relating to this Agreement, or the breach thereof, shall be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. No arbitration, arising out of, or relating to this Agreement, shall include, by consolidation, joinder, or in any other manner, any additional party not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the parties hereto. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitration of any dispute not described therein or with any party not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional party or parties duly consented to by the parties hereto shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable Statute of Limitations. The award rendered by the arbitrators

shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. Arbitration costs shall be split equally.

9. Cooperation. The parties agree to cooperate in all matters pertinent to this Agreement to the fullest extent possible. The County agrees to advise the City regularly as to the status of new or proposed certificates of occupancy, sewer permits, and any and all other data and information having an impact upon the volume, character, and treatment of sewage so that the City will be kept current as to such information in order to make proper and appropriate plans and/or adjustments in its system for the greater benefit of the City and County.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year aforesaid.

THE CITY OF WILMINGTON

BY: W. J. M. Lampley

Mayor

ATTEST: L. S. N. K. L. L.

City Clerk

NEW CASTLE COUNTY

BY: Robert D. L.

County Executive

ATTEST: Shirley A. Cooper

Approved as to form
April 6/3, 1983

Robert D. L.
City Solicitor

Approved as to form
April 7, 1983

James L. K.
County Attorney

WASTE WATER, TREATMENT, TRANSMISSION, AND COLLECTION PROJECTS
DEPRECIATION SCHEDULE
30 YEARS STRAIGHT LINE
EXHIBIT A

Bonds Issued	Issue Date	Maturity Date	Proceeds	Treatment Plant	Transmission & Collection	Estimated Project Completion	Remaining Life As of 7/1/82	Annual Depreciation Expense Treatment Plant	Annual Depreciation Expense Transmission & Collection
Sewer Disposal	1952	11/86	\$ 3,000,000	\$ 213,000	\$ 2,787,000	12/30/53	1.5 years	\$ 7,100	\$ 92,900
Sewer Disposal	1953	04/91	3,000,000	-0-	3,000,000	06/30/54	2.0 years	-0-	100,000
Sewer Disposal	1953	10/91	1,500,000	1,500,000	-0-	06/30/54	2.0 years	50,000	-0-
Sewer Disposal	1954	03/93	1,400,000	1,330,000	70,000	12/30/54	2.5 years	44,334	2,333
General Purpose	1954	03/79	350,000	-0-	350,000	03/31/54	2.9 years	-0-	11,667
Sewer Disposal	1955	08/93	390,000	-0-	390,000	06/30/56	4.0 years	-0-	13,000
General Purpose	1955	08/80	57,875	-0-	57,875	08/31/55	3.2 years	-0-	1,929
General Purpose	1956	06/81	126,000	-0-	126,000	06/30/56	4.0 years	-0-	4,200
General Purpose	1957	06/82	11,000	-0-	11,000	06/30/57	5.0 years	-0-	367
General Purpose	1958	05/83	1,513,000	-0-	1,513,000	05/31/58	5.11 years	-0-	50,433
Sewer Disposal	1966	03/91	2,000,000	2,000,000	-0-	12/30/67	15.5 years	66,667	-0-
General Purpose	1967	06/92	273,100	-0-	273,100	06/30/68	16.0 years	-0-	9,103
Sewer Disposal	1968	10/93	275,000	275,000	-0-	12/30/69	17.5 years	9,167	-0-
General Purpose	1968	10/93	130,000	-0-	130,000	12/30/69	17.5 years	-0-	4,333
Sewer Disposal	1969	10/94	315,000	315,000	-0-	12/30/70	18.5 years	10,500	-0-
General Purpose	1969	10/94	732,000	-0-	732,000	12/30/70	18.5 years	-0-	24,400
Sewer Disposal	1970	10/95	2,070,000	2,070,000	-0-	12/30/71	19.5 years	69,000	-0-
General Purpose	1970	10/95	228,000	-0-	228,000	12/30/71	19.5 years	-0-	7,600
Sewer Disposal	1971	10/96	3,700,000	3,700,000	-0-	12/31/72	20.5 years	123,333	-0-
General Purpose	1971	10/96	1,195,000	-0-	1,195,000	12/30/72	20.5 years	-0-	39,833
General Purpose	1972	11/97	2,500,000	-0-	2,500,000	12/30/73	21.5 years	-0-	83,333
General Purpose	1974	02/99	2,144,000	-0-	2,144,000	12/30/74	22.5 years	-0-	71,467
General Purpose	1975	02/00	630,000	-0-	630,000	12/30/75	23.5 years	-0-	21,000
General Purpose	1976	08/01	700,000	-0-	700,000	07/01/77	25.0 years	-0-	23,333
Water-Sewer	1978	03/03	2,665,000	2,400,000	265,000	09/01/78	26.25 years	80,000	8,833
Water-Sewer	1980	07/00	1,670,000	1,470,000	-0-	07/01/84*	32.0 years*	49,000	-0-
Water-Sewer	1982	07/02	1,915,000	-0-	200,000	07/01/81	29.0 years	-0-	6,667
Water-Sewer	1982	?	1,200,000*	500,000	1,415,000	07/01/83*	31.0 years	16,667	47,167
				1,200,000*	-0-	07/01/84	32.0 years*	40,000	-0-
Total Bond Funds			\$35,689,975	\$16,973,000	\$18,716,975			\$565,768	\$623,898

*Estimated

WASTE WATER, TREATMENT, TRANSMISSION, AND COLLECTION PROJECTS
DEPRECIATION SCHEDULE
30 YEARS STRAIGHT LINE
EXHIBIT A

<u>Federal and State Funds</u>		Estimated Project Completion	Remaining Life As of 7/1/82	Annual Depreciation Expense Treatment Plant	Transmission & Collection
Con 65-14 Federal and State	\$ 1,111,807	12/30/76	15.5 years	\$ 37,064	\$ -0-
Con 61-13 Federal	253,000	12/31/63	12.5 years	8,433	-0-
Project 0015					
Stages 1, 2, and 3					
	2,573,043	12/31/72	20.5 years	85,768	-0-
	4,542,339	12/31/73	21.5 years	151,411	-0-
	1,300,999	12/31/74	22.5 years	43,367	-0-
	3,671,757	12/31/75	23.5 years	122,392	-0-
Polishing Ponds	13,783,184	09/01/78	26.25 years	459,439	-0-
Dewatering Facility	15,000,000*	07/01/84*	32.0 years*	500,000	-0-
Federal and State Funds	\$42,236,129			\$1,407,874	\$ -0-
Total All Funds	\$77,926,104			\$1,973,642	\$623,898

*Estimated--Based on Grant Application

WASTE WATER, TREATMENT, TRANSMISSION, AND COLLECTION PROJECTS
MORTGIZATION SCHEDULE
EXHIBIT B

Bonds Issued	Issue Date	Maturity Date	Proceeds	Treatment Plant	Transmission & Collection
Sewer Disposal	1952	11/86	\$ 3,000,000	\$ 213,000	\$ 2,787,000
Sewer Disposal	1953	04/91	3,000,000	-0-	3,000,000
Sewer Disposal	1953	10/91	1,500,000	1,500,000	-0-
Sewer Disposal	1954	03/93	1,400,000	1,330,000	70,000
Sewer Disposal	1955	08/93	390,000	-0-	390,000
General Purpose	1958	05/83	1,513,000	-0-	1,513,000
Sewer Disposal	1966	03/91	2,000,000	2,000,000	-0-
General Purpose	1967	06/92	273,100	-0-	273,100
Sewer Disposal	1968	10/93	275,000	275,000	-0-
General Purpose	1968	10/93	130,000	-0-	130,000
Sewer Disposal	1969	10/94	315,000	315,000	-0-
General Purpose	1969	10/94	732,000	-0-	732,000
Sewer Disposal	1970	10/95	2,070,000	2,070,000	-0-
General Purpose	1970	10/95	228,000	-0-	228,000
Sewer Disposal	1971	10/96	3,700,000	3,700,000	-0-
General Purpose	1971	10/96	1,195,000	-0-	1,195,000
General Purpose	1972	11/97	2,500,000	-0-	2,500,000
General Purpose	1974	02/99	2,144,000	-0-	2,144,000
General Purpose	1975	02/00	630,000	-0-	630,000
General Purpose	1976	08/01	700,000	-0-	700,000
Water-Sewer	1978	03/03	2,665,000	2,400,000	265,000
Water-Sewer	1980	07/00	1,670,000	1,470,000	-0-
Water-Sewer	1982	07/02	1,915,000	500,000	200,000
Water-Sewer	1984	?	1,200,000*	1,200,000*	1,415,000
Total Bond Funds			\$35,145,100	\$16,973,000	\$18,172,100

*Estimated